

APPEAL NO. 93389

On March 26, 1993, a contested case hearing was held in (city), Texas, at the request of the claimant, to appeal attorney's fees awarded by the Texas Workers' Compensation Commission (Commission) to his attorney. The presiding hearing officer was (hearing officer). Although the attorney was present, the claimant did not appear at the hearing, and it was reconvened on April 5, 1993. The claimant personally appeared and the attorney appeared by teleconference call. The decision of the hearing officer, which was mailed April 30, 1993, upheld in full the Commission's previous award of attorney's fees.

After the hearing, the attorney submitted two more applications for attorney's fees to cover her appearance at both sessions of the contested case hearing. The hearing officer denied both applications in total, stating that he had no legal authority to approve such fees. These orders were dated April 15, 1993.

The attorney has appealed, pursuant to Texas W.C. Comm'n Rules, 28 TEX. ADMIN. CODE § 152.3(g) (Rule 152.3(g)), both of the April 15, 1993, determinations of the hearing officer stating that she actually received such orders on April 26, 1993. She argues that she had to travel from (city) to (city) for the first hearing, was unduly delayed due to the nonappearance of the claimant, and further had to consume time in the subsequent teleconference. She argues that claimant signed a fee contract but then took the position at the contested case hearing that no fees were due, and that it would be unjust and unfair not to compensate an attorney who is called upon to defend against such a claim. The claimant has not filed a reply.

DECISION

After reviewing the orders and applicable law, we affirm the determination of the hearing officer.

The attorney does not appeal the hearing officer's contested case hearing decision awarding her attorney's fees for services rendered for claimant. Therefore, we will not review it. Rather, she appeals his orders made after the hearing to disallow a claim for fees for attendance at that hearing. This is a proper appeal in accordance with Rule 152.3(g).

We acknowledge that the attorney travelled a great distance to attend the hearing, and consumed time in doing so. Nevertheless, the attorney was, at such hearings, representing herself, not the claimant. The Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. art. 8308-4.09 (Vernon Supp. 1993) (1989 Act), affords the Commission jurisdiction only to approve fees from the workers' compensation benefits that relate to "representing a claimant before the Commission." With regard to defense fees, Art. 8308-4.091(a) authorizes the Commission to approve only those fees to be paid for "defending an insurance carrier."

The appellant in this case did neither in the hearing on the award of attorney's fees.

The hearing officer was therefore correct in his determination that he had no jurisdiction to award such fees out of the claimant's workers' compensation benefit.

His determination to deny approval of such fees from claimant's workers' compensation benefits is therefore affirmed.

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Philip F. O'Neill
Appeals Judge